

BY Gutierrez

H. B. No. 3094

A BILL TO BE ENTITLED

AN ACT

1 relating to certain fees and penalties applicable to the regulation of barbers.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

3 SECTION 1. Section 23(b), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929
4 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

5 (b) The fees to be paid to the Board by an applicant for an examination to determine the
6 applicant's [his] fitness to receive a certificate of registration to practice barbering or to practice as a
7 barber technician shall be set by the board in an amount not to exceed \$50 [\$10].

8 SECTION 2. Section 24, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929
9 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

10 Sec. 24. VIOLATIONS [~~OFFENSES AND PENALTY~~]. Each of the following is a violation
11 of this Act for which an administrative penalty may be imposed under Section 24A of this Act: [offenses
12 shall constitute a misdemeanor punishable upon conviction in a court of competent jurisdiction by a fine
13 of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00):]

14 (A) The violation of any of the provisions of Sections 1, 2, or 3 of this Act;

15 (B) Permitting any person in one's employ, supervision, or control to practice as a barber
16 or other licensee unless that person has a current certificate of registration or license issued by the board;

17 (C) Obtaining or attempting to obtain a certificate of registration or license by
18 fraudulent representation;

19 (C-1) For anyone who owns, operates or manages a barber school or college to work
20 a chair or to permit teachers, student teachers, or anyone other than an enrolled student to render
21 barbering services to the public in their said establishment; and

22 (D) The willful failure to display a certificate of registration or license as required by
23 Section 19 of this Act.

1 SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a,
2 Vernon's Texas Civil Statutes), is amended by adding Sections 24A-24M to read as follows:

3 Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an
4 administrative penalty on a person for a violation under Section 24 of this Act.

5 Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the
6 administrative penalty may not exceed \$1,000. Each day a violation continues or occurs is a separate
7 violation for purposes of imposing a penalty.

8 (b) The amount of a penalty shall be based on:

9 (1) the seriousness of the violation, including the nature, circumstances, extent, and
10 gravity of the violation;

11 (2) the economic harm to property or the public caused by the violation;

12 (3) the history of previous violations;

13 (4) the amount necessary to deter a future violation;

14 (5) efforts to correct the violation; and

15 (6) any other matter that justice may require.

16 Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE
17 PENALTY. (a) If the executive director determines that a violation occurred, the executive director
18 may issue to the board a report stating:

19 (1) the facts on which the determination is based; and

20 (2) the executive director's recommendation on the imposition of an administrative
21 penalty, including a recommendation on the amount of the penalty.

22 (b) Not later than the 14th day after the date the report is issued, the executive director shall
23 give written notice of the report to the person.

24 (c) The notice must:

25 (1) include a brief summary of the alleged violation;

1 (2) state the amount of the recommended penalty; and

2 (3) inform the person of the person's right to a hearing on the occurrence of the
3 violation, the amount of the penalty, or both.

4 Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED.

5 (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

6 (1) accept the determination and recommended administrative penalty of the executive
7 director; or

8 (2) make a request for a hearing on the occurrence of the violation, the amount of the
9 penalty, or both.

10 (b) If the person accepts the determination and recommended penalty of the executive director,
11 the board by order shall approve the determination and impose the recommended penalty.

12 Sec. 24E. HEARING. (a) If the person requests a hearing or fails to respond in a timely
13 manner to the notice, the executive director shall set a hearing and give written notice of the hearing to
14 the person. An administrative law judge of the State Office of Administrative Hearings shall hold the
15 hearing.

16 (b) The administrative law judge shall make findings of fact and conclusions of law and
17 promptly issue to the board a proposal for a decision about the occurrence of the violation and the
18 amount of any proposed administrative penalty.

19 Sec. 24F. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and
20 proposal for a decision, the board by order may:

21 (1) find that a violation occurred and impose an administrative penalty; or

22 (2) find that a violation did not occur.

23 (b) The notice of the board's order given to the person must include a statement of the right of
24 the person to judicial review of the order.

25 Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th

1 day after the date the board's order becomes final, the person shall:

2 (1) pay the administrative penalty; or

3 (2) file a petition for judicial review contesting the occurrence of the violation, the
4 amount of the penalty, or both.

5 Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY. (a) Within
6 the 30-day period prescribed by Section 24G of this Act, a person who files a petition for judicial review
7 may:

8 (1) stay enforcement of the administrative penalty by:

9 (A) paying the penalty to the court for placement in an escrow account; or

10 (B) giving the court a supersedeas bond approved by the court that:

11 (i) is for the amount of the penalty; and

12 (ii) is effective until all judicial review of the board's order is final; or

13 (2) request the court to stay enforcement of the penalty by:

14 (A) filing with the court a sworn affidavit of the person stating that the person
15 is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

16 (B) giving a copy of the affidavit to the executive director by certified mail.

17 (b) If the executive director receives a copy of an affidavit under Subsection (a)(2) of this
18 section, the executive director may file with the court, not later than the fifth day after the date the copy
19 is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit
20 as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are
21 true. The person who files an affidavit has the burden of proving that the person is financially unable
22 to pay the penalty and to give a supersedeas bond.

23 Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. (a) If the person does not pay
24 the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

25 (b) The attorney general may sue to collect the penalty.

1 Sec. 24J. DECISION BY COURT. (a) If the court sustains the finding that a violation
2 occurred, the court may uphold or reduce the amount of the administrative penalty and order the person
3 to pay the full or reduced amount of the penalty.

4 (b) If the court does not sustain the finding that a violation occurred, the court shall order that
5 a penalty is not owed.

6 Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. (a) If
7 the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is
8 not upheld by the court, the court shall order, when the court's judgment becomes final, that the
9 appropriate amount plus accrued interest be remitted to the person.

10 (b) The interest accrues at the rate charged on loans to depository institutions by the New York
11 Federal Reserve Bank.

12 (c) The interest shall be paid for the period beginning on the date the penalty is paid and ending
13 on the date the penalty is remitted.

14 Sec. 24L. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the
15 administrative penalty is not upheld by the court, the court shall order, when the court's judgment
16 becomes final, the release of the bond.

17 (b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court
18 shall order the release of the bond after the person pays the reduced amount.

19 Sec. 24M. ADMINISTRATIVE PROCEDURE. A proceeding to impose an administrative
20 penalty is considered to be a contested case under Chapter 2001, Government Code.

21 SECTION 4. (a) This Act takes effect September 1, 1999.

22 (b) The change in law made by this Act to Section 23(b), Chapter 65, Acts of the 41st
23 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), applies only to
24 an application for an examination filed on or after that date. An application filed before the effective
25 date of this Act is governed by the law in effect on the date the application was filed, and the former law

1 is continued in effect for that purpose.

2 (c) The change in law made by this Act applies only to a violation under Section 24, Chapter
3 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil
4 Statutes), as amended by this Act, that occurs on or after the effective date of this Act. A violation of
5 that section that occurs before the effective date of this Act is governed by the law in effect on the day
6 the violation occurred, and the former law is continued in effect for that purpose.

7 (d) For purposes of Subsection (c) of this section, a violation occurs before the effective date
8 of this Act if any element of the violation occurs before that date.

9 SECTION 5. The importance of this legislation and the crowded condition of the calendars in
10 both houses create an emergency and an imperative public necessity that the constitutional rule
11 requiring bills to be read on three several days in each house be suspended, and this rule is hereby
12 suspended.
13

A BILL TO BE ENTITLED
AN ACT*Robert A. Buntney**relating to certain fees and penalties applicable to the regulation of barbers*

MAR 11 1999

Filed with the Chief Clerk

MAR 15 1999

Read first time and referred to Committee on

Public Health

Reported ___ favorably (as amended)
(as substituted)Sent to Committee on (Calendars)
(Local & Consent Calendars)Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of ___ yeas, ___ nays, ___ present, not voting)Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of ___ yeas, ___ nays, ___ present, not votingRead third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of ___ yeas, ___ nays, ___ present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(___ yeas, ___ nays)Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(___ yeas, ___ nays)

Senate and Constitutional 3 Day Rules suspended by a vote of ___ yeas, ___ nays

Read third time, _____, and passed by (a viva voce vote)
(___ yeas, ___ nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,
_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)